

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against RONALD LYLE KOPESKA,  
a Minnesota Attorney,  
Registration No. 5754X.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on April 15, 1977. Respondent currently practices law in Edina, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On May 1, 2007, respondent was issued an admonition for entering into a series of business transactions with a client without complying with the necessary requirements therefore and for advising a corporate client to divest itself of property, drafting the warranty deed transferring the property to individual shareholders of the corporation as tenants in common, and then converting his stock interest into a mortgage on the same property which created a conflict of interest in violation of Rules 1.7(b) and 1.8(a), Minnesota Rules of Professional Conduct (MRPC).

B. On January 14, 2002, respondent was suspended from the practice of law for a period of six months for testifying falsely under oath in response to a direct question by the court in violation of Rules 3.3(a)(1), 8.4(c) and 8.4(d), MRPC.

### FIRST COUNT

#### Dry Corporation Matter

1. From February 5, 1980, until November 29, 1989, respondent practiced law as a professional corporation entitled Kopeska and Associates, Ltd. On November 29, 1989, respondent changed the name of the corporation to Preferred Pension Evaluators, Inc. From November 29, 1989, through March 7, 1991, respondent continued to practice law through Kopeska and Associates, an unincorporated professional association. On March 7, 1991, respondent formed Kopeska and Associates, P.A., a professional corporation. On June 30, 1991, Kopeska and Associates, P.A., assumed the name of Kopeska and Associates, Ltd.

2. Beginning in 1986, respondent represented Dry Corporation. Sometime in 1988, the Department of Labor brought a lawsuit against Dry Corporation. During August and September 1988, respondent deposited \$25,000 of Dry Corporation's funds into his trust account to pay for a settlement of the lawsuit. On or about October 8, 1988, the parties settled the lawsuit and Dry Corporation agreed to pay the Department of Labor a settlement in the amount of \$20,000. Respondent disbursed \$20,003 to the Department of Labor from his trust account.<sup>1</sup>

3. Dry Corporation was insolvent. As counsel for Dry Corporation, respondent attended a hearing on November 7, 1988. During the hearing the court indicated that a receivership was being appointed for Dry Corporation and the parties were directed to prepare an order for the court appointing John Almquist, C.P.A., as receiver for Dry Corporation's assets. Respondent participated in the preparation of the order, which was signed by the court on December 7, 1988, and filed on December 30,

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<sup>1</sup> An additional cost of \$3 was incurred in the transmittal of the settlement funds.

1988. By letter dated November 8, 1988, respondent acknowledged that a receiver was going to be appointed.

4. On or about December 19, 1988, the court ordered respondent to pay attorney fees in the amount of \$750 to the Department of Labor. That same day, respondent disbursed \$750 from his trust account on behalf of Dry Corporation, in payment of court ordered attorney fees. Respondent continued to hold the remaining \$4,247 in his trust account on behalf of Dry Corporation.

5. Upon the filing of the order appointing a receivership on December 30, 1988, all of Dry Corporation's assets were immediately subject to the control and direction of the presiding court and the duly appointed receiver. As of December 30, 1988, respondent held \$4,247 in his trust account on behalf of Dry Corporation.

6. Respondent had unpaid legal bills with Dry Corporation. As counsel for Dry Corporation, respondent was aware that the company was insolvent and also had several outstanding judgments against it.

7. On January 3, 1989, respondent directed his secretary to prepare a billing summary for Dry Corporation and to contact Ronald Heskin, an officer for Dry Corporation, for authority to pay his outstanding attorney fees from the remaining funds he held in trust for Dry Corporation. Heskin gave respondent authority to disburse the funds. On January 3, 1989, respondent disbursed from his trust account check no. 1343 in the amount of \$4,246.20 payable to his law firm for legal fees incurred by Dry Corporation. Respondent deposited the check into his law firm's general business account. Respondent did not request or receive authority from the receiver or the court to disburse the Dry Corporation funds from his trust account.

8. On January 11, 1989, respondent wrote the receiver but failed to disclose the trust transaction. Respondent stated he had "no monies belonging to Heskin or Dry Corporation" but failed to explain that the trust account held no monies because respondent had recently removed the remainder of the funds to pay his outstanding bill. Respondent further stated, "At this writing Dry Corporation has an outstanding

bill due me.” Respondent’s statement was false. After respondent removed \$4,246.20 from his trust account to apply toward Dry Corporation’s bill, respondent’s bill was paid in full.<sup>2</sup>

9. Prior to January 3, 1989, respondent had actual knowledge that a receiver was being appointed for Dry Corporation. Although the order was signed on December 27, 1988, respondent claims that he first knew that a receivership had actually been established as of January 10, 1989. At that time respondent had an affirmative duty to disclose the trust account transaction to the receiver and to restore the funds withdrawn from the trust account. Despite this obligation, respondent’s January 11, 1989, letter to the receiver failed to disclose his withdrawal of \$4,246.20 of Dry Corporation’s funds from his trust account for attorney fees.

10. Almquist sued respondent to recover the funds inappropriately disbursed. On July 30, 1992, the court determined that respondent converted \$4,247 of Dry Corporation’s funds, that respondent was personally liable for these funds and granted judgment in favor of the receiver and against respondent in the amount of \$4,247 plus costs and disbursements. The judgment was docketed on September 1, 1992. Respondent neither appealed nor paid the judgment.

11. On March 12, 1993, Almquist assigned the judgment to S. Warren Gale, who began attempts to collect the judgment from respondent. On April 8, 1993, respondent submitted his Judgment Debtor’s Answers to Plaintiff’s Interrogatories and Request for Production of Documents. By letter dated May 25, 1999, Gale requested respondent resolve the judgment, which had grown to \$6,068.19. Respondent did not respond.

12. On April 24, 2002, Gale began his attempts to serve respondent with a writ of execution to renew the judgment. Although the Sheriff’s Office made multiple visits

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<sup>2</sup> After disbursing \$4,246.20 to himself, \$0.80 remained in respondent’s trust account and attributed to Dry Corporation. Sometime in March 1989, respondent issued a check in the amount of eighty cents to his corporate practice, thereby closing out Dry Corporation’s balance.

to respondent's office and left cards for him to contact the Sheriff's Office, respondent failed to do so, thus avoiding service. Gale spoke with respondent, but respondent failed to pay the judgment. Respondent also refused to disclose the name of his attorney, would not give his current address and refused to accept service of the summons and complaint.

13. On August 8, 2002, Gale wrote Dan O'Connell, respondent's attorney in a different matter, enclosing the summons and complaint, and asked O'Connell to have respondent execute a receipt and waiver. The executed documents were returned to Gale on August 15, 2002. Respondent began making monthly payments. Respondent paid off the balance in full and a satisfaction of judgment was issued in December 2003.

14. Respondent's conduct violated Rules 3.4(c) and 8.4(c) and (d), MRPC.

#### SECOND COUNT

##### Dawn Young Matter

15. On June 10, 1997, Dawn Young was divorced from her husband. As part of the final judgment and decree, Young was given a quit claim deed to the parties' marital homestead. Young's equity in the home was approximately \$85,000.

16. After the divorce, Young was experiencing significant financial troubles. On August 20, 1997, the attorney who represented Young in the dissolution proceedings filed an attorney's lien against the homestead in the amount of \$18,400.70. In addition, Young owed approximately \$7,000 in arrears on her mortgage to GE Capital.

17. In late August 1997, Young's friend, Sylvester Phillips, offered to pay Young's debts and bring her mortgage current. As security, Phillips had Young execute a warranty deed to him. Phillips agreed not to record the deed and to hold it as security until Young was able to pay him back. Phillips did not pay any of Young's debts but charged her a \$10,000 "commission." On September 2, 1997, GE Capital initiated foreclosure proceedings against Young.

18. In an attempt to obtain financing to pay Young's debts, Phillips contacted a mortgage broker, Kevin Bakewell, who bypassed Phillips and contacted Young directly. Bakewell arranged for Young to meet with respondent regarding her legal options.

19. On or about October 9, 1997, Young met respondent at his law office. Respondent advised Young as to her legal rights. Respondent advised that Phillips' warranty deed was invalid and that Phillips' attempt to obtain a \$10,000 commission was illegal. Respondent had drafted a quitclaim deed prior to the meeting with Young. Respondent advised Young to sign the quitclaim deed thereby transferring her rights in the homestead to L.M. Corporation, a Minnesota limited liability corporation in which respondent is an officer and respondent's sister owns a portion thereof.<sup>3</sup>

20. Respondent did not comply with Rule 1.8(a), MRPC, which sets forth the requirements for entering into a business transaction with a client.<sup>4</sup> Respondent failed to give Young a reasonable opportunity to seek the advice of independent counsel and failed to obtain Young's written consent to the conflict. Respondent also did not disclose his relationship with L.M. Corporation or that his sister owned an interest therein. Respondent also failed to provide Young with the closing documents prior to her signing the quitclaim deed and failed to disclose the interest rate and closing costs of the transaction.

21. Respondent advised Young that he would record the quitclaim deed before Phillips could record his warranty deed and that L.M. Corporation would satisfy judgment liens and bring the GE Capital payments current.

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<sup>3</sup> L.M. Corporation is a Minnesota corporation and, at the time of these transactions, was owned by Wallwalker Inc., in which respondent is a representative, and Carapace Corporation, which is a company solely owned by Rebecca Bullard, respondent's sister, and in which respondent was the incorporator, secretary, treasurer and on the Board of Directors. Respondent is the Director, president, secretary and treasurer of L.M. Corporation. L.M.'s corporate address is the same as respondent's law office.

<sup>4</sup> Respondent's misconduct occurred in 1997. Since respondent's misconduct predates the current MRPC (2005), the Director has analyzed respondent's misconduct under the MRPC applicable at the time the misconduct occurred.

22. Respondent paid off several debts owed by Young through another corporation entitled Mortgage Group III in which respondent also served as an officer and his sister owned an interest therein.<sup>5</sup> Respondent brought Young current with her mortgagee by paying GE Capital \$11,811. Respondent also negotiated a settlement with Young's divorce attorney and paid attorney fees in the amount of \$9,000 in release of the attorney's lien on the homestead. Respondent paid four other creditors a total of \$3,779.97. Respondent billed Young for his legal services for negotiating and paying off these debts. Young was unaware of the negotiations and payments made by respondent on her behalf.

23. On October 31, 1997, Phillips recorded the warranty deed that Young had previously executed. In response, respondent asked Young to meet with him at his law office on November 14, 1997. When Young arrived respondent was present along with attorney Suzanne Basiago. Respondent stated he wanted to depose Young in order to memorialize the transactions between Phillips and Young.

24. Young believed that respondent was her attorney for purposes of the deposition. At no point during the deposition did respondent clarify that he did not represent Young or that he only represented L.M. Corporation. In the introduction of the oral examination, Basiago introduced herself as the attorney for L.M. Corporation, and stated: "Also present is Ron Kopeska, and I don't know what your title is, L.M. - -." Respondent stated: "I'm not - -." To which Basiago states: "Okay. You're not." During the examination, respondent also directed Young not to give testimony beyond direct questioning. Finally, respondent charged Young attorney fees for a conference that he had with Bakewell in preparation for the deposition and for the deposition itself.

26. In December 1997, respondent drafted a mortgage whereby L.M. Corporation conveyed a mortgage (secondary to GE Capital) to Mortgage Group III in

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<sup>5</sup> Mortgage Group III is a Minnesota corporation which was organized by Kopeska & Associates (respondent's law firm) and respondent's sister. Respondent was Mortgage Group III's manager, secretary, treasurer and sat on the Board of Governors during the time these transactions with Young took place. Mortgage Group III's corporate address is the same as respondent's law office.

the amount of \$29,250. Respondent signed the instrument as treasurer for L.M. Corporation on December 9, 1997, and recorded the document on December 18, 1997. Respondent did not inform Young that he had placed a second mortgage on her home, what costs would be expended or at what interest rate Mortgage Group III would charge her. Respondent did not inform Young of his relationship with Mortgage Group III.

27. Also on December 9, 1997, respondent quitclaimed the Young property from L.M. Corporation to Carapace Corporation, which is a Minnesota corporation completely owned by respondent's sister. Respondent also served as an officer at the time<sup>6</sup>. The quitclaim was filed on December 18, 1997, together with the mortgage from L.M. Corporation to Mortgage Group III.

28. On December 11, 1997, respondent, through Carapace Corporation, had Young as purchaser sign a contract for deed which provided for a \$172,580 purchase price with monthly installments of \$2,500 and a 10.72 percent per annum rate. The contract provided for late penalties and that all principal, interest and late fees would come due on December 1, 2000. In return, Carapace was to make payments on the first mortgage to GE Capital and the second mortgage to Mortgage Group III. As treasurer for Carapace Corporation, respondent recorded the contract for deed on December 18, 1997. Respondent did not explain the contract for deed or its legal ramifications to Young. Young believed she was signing a second mortgage.

29. Respondent again failed to comply with Rule 1.8(a), MRPC. Respondent failed to give Young a reasonable opportunity to seek the advice of independent counsel prior to signing the contract for deed and failed to obtain Young's written consent to the conflict. Respondent also did not disclose his relationship with Carapace Corporation or that his sister owned an interest therein.

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<sup>6</sup> Respondent is the incorporator, secretary, treasurer and is one of two Directors. The corporate address is respondent's law firm.



30. On December 31, 1997, Carapace Corporation assigned Young's contract for deed to Supply Company, d/b/a Alpha II Mortgage Company (hereinafter Alpha II), which at the time was predominantly owned by respondent's sister. Respondent served as an officer and director for Alpha II.<sup>7</sup> In addition, Mortgage Group III had retained Alpha II to service its portfolio of mortgages and perform operational functions. Respondent is Mortgage Group III's manager, secretary, treasurer and sat on the Board of Governors during this time.

31. The amount owed on the contract for deed was \$173,491.51. The document was drafted by respondent as treasurer for Carapace Corporation with tax statements to be sent to Alpha II at respondent's law office address. The instrument was recorded on May 20, 1998.

32. Respondent did not inform Young that he had assigned the contract for deed with Carapace to Alpha II and Young continued to make payments to Carapace rather than Alpha II. Respondent did not inform her of his relationship with these entities and failed to advise Young to consult with a different attorney to represent her in the matter.

33. Young sought to refinance the mortgage on her homestead. Both Young and a loan officer contacted respondent to provide a pay-off figure. Respondent failed to provide an accurate figure and refinancing fell through. Soon thereafter, Young stopped making payments to Carapace Corporation on her home. On March 15, 1999, respondent, as attorney for Carapace Corporation, caused Young to be served with a notice of cancellation of contract for deed.

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<sup>7</sup> Alpha II is a Minnesota Corporation and is owned by (1) respondent's sister, (2) Carapace Corporation, which is wholly owned by respondent's sister, and (3) Al Butcher. Respondent is the secretary, treasurer and one of two directors of Alpha II (respondent's sister was the other director) as well as secretary, treasurer and one of two directors of Carapace (respondent's sister was the other director). Alpha II's corporate office is the same as respondent's law office.

34. In May 1999, Alpha II stopped making the monthly payments to GE Capital on Young's behalf. Young then began making mortgage payments directly to GE Capital.

35. On January 12, 2000, respondent, as agent for Carapace Corporation, recorded the notice of cancellation of contract for deed. On January 19, 2000, respondent, as agent for Mortgage Group III, signed and had filed a notice of pendency of proceedings and power of attorney to foreclose mortgage. On March 23, 2000, respondent, through Mortgage Group III, had Young served with a notice of mortgage foreclosure.

36. On May 3, 2000, the Ramsey County Sheriff's Office held a foreclosure sale. Mortgage Group III bid \$31,970.98 on the home, directed the tax statements to be sent to respondent's law firm address and recorded the sheriff's certificate of sale.

37. On or about March 16, 2001, Mortgage Group III filed an eviction action against Young. In response Young filed for bankruptcy on March 27, 2001. The pending bankruptcy stayed the eviction action. On July 3, 2001, the bankruptcy court discharged Young's debts, including the claims of respondent, L.M. Corporation, Carapace Corporation, Alpha II and Mortgage Group III.

38. Young brought a motion to dismiss the eviction action on the grounds that Mortgage Group III could not prove it had title to the property. The district court ordered the eviction action stayed pending resolution of a quiet title action.

39. In March 2003, Young settled her claims against respondent and his law firm, Alpha II, L.M. Corporation, Carapace Corporation, Mortgage Group III and respondent's sister. The parties signed a settlement agreement whereby respondent, all of the above corporations and respondent's sister released all claims and interest in Young's homestead. Respondent signed a stipulation to quiet title in favor of Young and respondent agreed to pay Young's attorney fees in the amount of \$50,000. On April 22, 2003, Young's claims were dismissed with prejudice per the terms of the settlement agreement.

40. Respondent's conduct violated Rules 1.7(b) and 1.8(a), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

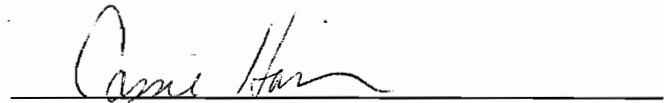
Dated: October 30, 2007.



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